IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.11570 of 2006
DATE OF DECISION:10.11.2006
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The Pepsu Road Transport Corporation.

..PETITIONER

VS.

Presiding Officer, Labour Court and another.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. S.P. Garg, Advocate
for the petitioner.

Mr. Puneet Jindal, Advocate
for respondent No.2.
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ARVIND KUMAR, J.

The prayer in this petition filed under Articles 226/227 of the Constitution of India is to be award dated 31.3.2006 passed by respondent No.1 ordering re-instatement of respondent No.2-workman with continuity of service and full back wages along with 6% interest.

It may be noticed that it is third round of litigation between the employer and employee viz. the petitioner and respondent No.2 respectively. Initially the services of respondent No.2, who was serving the petitioner as a Driver were terminated on 17.3.1989 following the charge of remaining absent from duty. Dissatisfied with the said action of the petitioner, respondent No.2 approached the Civil Court for redressal of his grievance by way of filing a civil suit. His suit was decreed by the Civil Court on 3.6.1993. The order of termination of his service was set aside with a rider that the petitioner could hold fresh enquiry against respondent No.2. The appeal preferred by the petitioner against the judgment and decree of the civil court dated 3.6.1993 was dismissed by the Addl. District Judge on 10.3.1995. Thereafter, the petitioner, in the light of the liberty given by the Civil Court of holding enquiry afresh against the workman, appointed an enquiry officer for conducting enquiry afresh. That enquiry proceedings were carried out ex-parte against respondent No.2-workman.

On the basis of report of the enquiry officer, services of respondent No.2 were again ordered to be terminated vide order dated 6.5.1999. Aggrieved with the same, this time, respondent No.2-workman approached the appropriate Government and raised an industrial dispute. The appropriate Government referred the dispute to the Labour Court for adjudication. On completion of pleadings, the Labour Court framed the issues with regard to the fairness of enquiry conducted against the workman and whether his services were justifiably terminated or not? Both the parties led their respective evidence in support of their pleas. On conclusion of proceedings, the Labour Court vide the impugned award held that the enquiry, which was the basis of termination of services of the workman, was not conducted fairly. It further concluded that the punishment awarded to the workman was not in consonance with his alleged misconduct. It accordingly, as noticed above, set aside the termination of services of workman and ordered his re-instatement with continuity of service and full back wages along with 6% interest.

Dissatisfied with the same, the petitioner-Corporation has preferred the instant petition.

We have heard learned counsel for the parties and have gone through the paper-book carefully as also the impugned award.

In the instant case, the Labour Court has chosen to exercise the power under Section 11-A of the Industrial Disputes Act, 1947 (for short the Act). The counsel for the petitioner has questioned the exercise of such power by the Labour Court. The contention is meritless. There is no dispute that the Tribunal has no jurisdiction to sit in the judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the enquiry is unfair or the findings arrived at in the enquiry are perverse or have no basis in evidence or the management is guilty of victimisation, unfair labour practise or malafide or the punishment is harsh and oppressive. In the instant case, a bare perusal of the award shows that the previous enquiry was also an ex parte one, which was set aside by the Civil Court with liberty to hold fresh enquiry. Even the subsequent enquiry was also an ex parte. The plea of the respondent-workman was that he continued to report for duty on 9.10.1988 after

availing the sanctioned leave from 8.9.1988 to 8.10.1988, but he was not allowed to join the duty. Labour Court, thus, concluded that the respondent-workman, whose job is at stake, could not afford proceedings ex parte without defending. The impugned award also shows that what impressed the Labour Court from the enquiry report was that despite request of the respondent-workman to supply the documents, as the earlier documents available with him are not legible due to excessive rain and got wet and there was also simultaneous findings by the Civil Court that there were floods in the year 1988; the respondent-workman was not supplied with the requisite documents in the enquiry conducted again pursuant to the liberty given by the Civil Court. A bare perusal of the impugned award further shows that the Labour Court found that in re-enquiry the enquiry officer, in his report, pre-supposed the termination. This led the Labour Court to hold that the workman was not given proper opportunity of being heard and the enquiry was not conducted in a fair manner and the alleged misconduct was also not so grave which warranted termination of the services of the workman. It has also been pointed out by learned counsel for the respondent that there is nothing that he was habituated to absence. Learned counsel for the petitioner has not been able to rebut the findings of the Labour Court and the averments made by the counsel for the respondent-workman.

While exercising the writ jurisdiction under Article 226/227 of the Constitution of India, this Court would not sit as a Court of appeal over the findings of fact recorded by the Labour Court. Even otherwise, this Court is satisfied that on the basis of evidence on record, the Labour Court has arrived at certain findings of fact, which are neither perverse nor based on no evidence. In these circumstances, it would not be possible to interfere with the award given by the Labour Court The petition is wholly without merit and the same is dismissed accordingly. No costs.

(ARVIND KUMAR)
JUDGE

November 10,2006 **(J.S. NARANG)**
Jiten **JUDGE**